IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3285 OF 2006

Nitin Mane & Ors. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. S.A. Tawate for the Petitioners.
Ms.Vaidehi Mhaispurkar, AGP for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 29, 2006.

P.C.

An order of retrenchment was passed by the employer under Section 25F of the Industrial Disputes Act, 1947 and retrenchment compensation was admittedly paid. In a complaint of unfair labour practices, the Labour Court granted interim relief by directing the employer to provide work to the retrenched workman or, in the alternative, to pay full wages until the complaint is finally heard and disposed of. The order was set aside in revision by the Industrial Court.

The Industrial Court noted that a perusal of the judgment of the Labour Court would show that paragraphs 7, 8 and 9 merely

contained a recording of submissions. The entire reasoning was contained in paragraphs 10 and 11 of the judgment of the Labour Court. The Labour Court was inclined to take the view that since the Seniority List was not displayed as provided under the Industrial Disputes (Bombay) Rules, the order of retrenchment would have to be termed as unlawful, warranting the grant of interim relief. The contention of the employer was that the Seniority List which had been prepared was not contrary to law. The Labour Court held that all the issues were required to be agitated on merits at the final hearing. However, having come to the conclusion that a prima facie case had been made out, an interim order was passed by the Labour Court.

The Industrial Court has adverted to the judgment in **Navbharat Hindi Daily, Nagpur vs. Navbharat Shramik Sangha,**[1] wherein a Division Bench of this Court held that it could never be said that Rule 81 of the Bombay Rules does not cast any obligation on the employer "to strictly follow the rule." This decision was considered by Mr.Justice B.N. Srikrishna, (as the Learned Judge then was), in **Chemical Mazdoor Sabha Vs. Vithal Organics**

1 1984 LAB. I.C. 445

Pvt. Ltd. & Ors.[2] The Learned Judge was of the view that **Navbharat's** case was one where an employer had not complied with the principle of "last come first go" under Section 25G. The provisions of Rule 81 were also not complied with because the Seniority List had not been displayed at all. The judgment of Justice B.N. Srikrishna adverts to the findings in paras 16, 17 and 19 of the decision in **Navbharat.** The Learned Judge held that from a reading of those observations, it is evident that the Division Bench was satisfied that the retrenchment was contrary to the mandatory provisions of Section 25G, that Rule 81 was obligatory and since there was a failure to comply with Section 25G and Rule 81, the action of retrenchment was illegal. The decision in **Chemical Mazdoor Sabha**'s case holds that the earlier judgment of the Division Bench in **Navbharat** would show that the question as to whether the provisions of Rule 81 were mandatory or directory was not canvassed before the Division Bench much less was there any discussion or any considered view expressed thereon. The judgment in **Chemical Mazdoor Sabha** reads the judgment of the Division Bench in **Navbharat** as highlighting the importance of Rule 81 and indicating that the employer was obliged to comply

2 1995 II CLR 465

therewith. The judgment of the Division Bench in other words, does not lay down that retrenchment of workmen, even in compliance with Sections 25F and 25G would become illegal and non est if Rule 81 was not complied with.

At this stage, the Complaint is pending before the Labour Court. The proceedings were confined to the question as to whether an order of interim relief was warranted. The Industrial Court has given valid reasons for coming to the conclusion that no reasons for granting interim relief were given by the Labour Court. All the disputed questions would be undoubtedly considered on merits at the trial of the proceedings. No case for interference is made out. However, having regard to the circumstances, it would be open to the Petitioners to apply for expeditious disposal of the complaint. If such an application is made, the Trial Judge will consider it appropriately having regard to the exigencies of his own work.

Before concluding, it is clarified that the complaint shall be disposed of on merits. All observations contained in this order and in the orders of the Courts below are confined to the disposal

of the application for the interim relief and shall not come in the way of the final disposal of the complaint.

The Petition is dismissed.

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